Supreme Court of the United States.

No. 203.—October Term, 1902.

James Hennessy, Maurice Hennessy, Armand Castellon, and Emanuel Castaigne, Appellants,
vs.
Richardson Drug Company.

Appeal from the Circuit Court of the United States for the District of Nebraska.

[March 23, 1903.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This was a bill alleging that complainants were "all of Cognac in France, and citizens of the Republic of France," and that defendant was a citizen of Nebraska, and a resident of the judicial district thereof; that complainants owned and employed a certain trade mark for Hennessy brandy, (which they produced, bottled and sold,) of a value exceeding two thousand dollars, which trade mark had been properly registered in the Patent Office under the act of Congress of March 3, 1881; and that defendant was selling an imitation "Hennessy brandy," using facsimiles of complainants' trade name, devices and labels. Injunction, profits, and damages were prayed for.

The case was brought to issue, heard on pleadings and proofs, and dismissed, it being held that the court had no jurisdiction because "complainants' citizenship or alienage is not alleged, as required;" and also that the case was with defendant on the merits.

The decree stated among other things: "And the court finds that neither the bill, nor the bill as amended nor the evidence shows the citizenship of complainants, or any of them so as to confer jurisdiction upon this court. And the court further finds with and for the defendants and against the complainants on the evidence, and that the bill as amended is without equity. And for both and all the reasons hereinbefore recited," the bill was dismissed.

The court then granted a certificate in these words: "It is certified that the question of jurisdiction referred to in the opinion was passed upon—but that the case was also determined upon its merits. The question of jurisdiction set forth in the opinion filed herein together with the question of the merits of the case is hereby certified to the Supreme Court, all of which are shown by the decree and the opinion."

An appeal was taken directly to this court under the first of the classes of cases enumerated in section five of the judiciary act of March

3, 1891, and we are shut up to the consideration of the question of jurisdiction alone. We do not understand that the amount in controversy was treated below as having any bearing in respect of that question. The act of March 3, 1881 provides for jurisdiction "without regard to the amount in controversy," and the averment here was that the value of the trade mark exceeded two thousand dollars. The point, however, was not relied on, and we confine ourselves to the question of jurisdiction as dependent on citizenship.

By the Constitution, the judicial power of the United States extends to controversies between citizens of a State, "and foreign States, citizens or subjects." And by statute, Circuit Courts of the United States have original cognizance of all suits of a civil nature, at common law or in equity, in which there is "a controversy between citizens of a State and foreign States, citizens, or subjects." 25 Stat. 433, c. 866.

In *Stuart* v. *Easton*, 156 U. S. 46, it was held that by the description of plaintiff as "a citizen of London, England," the fact that he was a subject of the British Crown was not made affirmatively to appear as required; but, in the case at bar, complainants described themselves as "all of Cognac in France, and citizens of the Republic of France," and this was sufficient.

No averment of alienage was necessary. It is true that by section 6 of the judiciary act of March 3, 1891, the judgments and decrees of the Circuit Courts of Appeals were made final in cases, among others, in which the jurisdiction was dependent entirely on the opposite parties to the suit or controversy being citizens of different States, or "aliens and citizens of the United States." But the word "aliens" as there used embraces subjects or citizens of foreign countries, and not merely persons resident in this country, who owe allegiance to another. And the language of the Constitution and of the act determining the jurisdiction of the Circuit Courts is explicit.

In *Chisholm* v. *Georgia*, 2 Dallas, 419, 456, Mr. Justice Wilson said that under the Constitution of the United States "there are citizens, but no subjects. 'Citizen of the United States.' 'Citizens of another State.' 'Citizens of different States.' 'A State or citizen thereof.' The term, subject, occurs, indeed, once in the instrument; but to mark the contrast strongly, the epithet 'foreign' is prefixed."

The Supreme Court of North Carolina in *State* v. *Manuel*, 4 Dev. & Bat. 20, 26, (quoted in *United States* v. *Wong Kim Ark*, 169 U. S. 649,) said: "The term 'citizen,' as understood in our law, is precisely analogous to the term 'subject' in the common law, and the change of phrase has entirely resulted from the change of government. The sovereignty has been transferred from one man to the collective body of the people; and he who before was a 'subject of the King' is now 'a citizen of the State.'"

In that view the people of France are properly described as citizens of that Republic.

As complainants were citizens of a foreign State and defendant was a citizen of Nebraska, as affirmatively appeared from the pleadings, no issue of fact arising in that regard, the Circuit Court had jurisdiction.

Decree reversed and cause remanded for rehearing on the merits.

James Hennessy et al., Appellants,
vs.
Walter Moise et al. } No. 204.

James Hennessy et al., Appellants,
vs.
Carrie May et al. } No. 205.

MR. CHIEF JUSTICE FULLER: These cases must take the same course as that just decided, and the same decrees will be entered.

True copy.

Test:

Clerk Supreme Court, U. S.